IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR
::::

O R D E R

Raghuveer Singh
vs
Labour Court & Ors.

S.B. CIVIL WRIT PETITION NO.4032/2002 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER : **5th Sept., 2006**

PRESENT

HON'BLE MR.MOHAMMAD RAFIQ,J.

Mr.Vijay Mehta, Advocate for the petitioner.
Mrs. Suman Porwal, Advocate for the respondents.

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BY THE COURT: -

Under challenge in this writ petition is the award dated 28.6.2002 passed by the learned Labour Court, Bhilwara whereby the reference made to it on the question whether the removal of the petitioner on the post of conductor was legal and justified and if not to what relief he was entitled to.

The case set up by the petitioner-workman before the labour court was that he was appointed in the services of the respondents as conductor on daily wages basis vide order dated 15.9.1982. He worked with the respondents regularly upto 26th Oct., 1983. He was then removed from service by verbal order. He had completed 240 days in the services of the respondents in a calender year immediately preceding to date of his retrenchment. The respondents did not make compliance of Section 25F of the Industrial Disputes Act, 1947 nor did they afford him an opportunity of hearing prior to his removal. The respondents appointed many other conductors in their services after removal of the petitioner.

The claim of the petitioner was contested by the respondents who maintained that the petitioner was appointed in different spells for fixed period of 30 days in each of them and was paid @ 12/- per day. They have denied that petitioner was in their continues service for the period from 15.9.1982 to 26.10.1984. It has been stated that petitioner did not work at all for the periods from 19.10.1982 to 6.11.1982, 26.11.1982 to 20.12.1982, 21.1.1983 to 30.1.1983, 3.3.1983 to 10.3.1983, 7.4.1983 to

12.5.1983, 13.6.1983 to 10.8.1983 and 11.9.1983 to 21.10.1983. It was contended that petitioner prior to approaching the learned labour court had also filed civil suit and when the same was dismissed,he raised industrial dispute after 13 years form the date of his alleged retrenchment in the year 1996. The petitioner was not appointed on regular basis and therefore there was no question of maintaining any seniority. Moreover, he was appointed in different spells for a period of only 30 days at one go. In between there were number of breaks, therefore also, the seniority could not be maintained.

Shri Vijay Mehta, learned counsel for the petitioner argued that the learned labour court has committed an error in recording the finding that the petitioner did not complete 240 days in a calender year immediately preceding the date of his retrenchment. He has alternatively argued that even if it is assumed that compliance of Section 25F of the Industrial Disputes Act was not required for this reason, the respondents should comply the provisions of Section 25G and 25H of the Industrial Disputes Act because several of the petitioner's Juniors were retained in service and after petitioner's retrenchment, several other persons were

engaged. He therefore argued that the award passed by the learned labour court be set aside and the respondents be directed to reinstate the petitioner. Learned counsel for the petitioner in support of his arguments relied upon the judgment of this Court in S.B. Civil Writ Petition No.4582/2001 (State of Rajasthan & Ors. Vs. Kamal Kishore Mathur & Anr., decided 11.12.2001).

On the other hand, Mrs. Suman Porwal, appearing for the respondents argued that the affidavits produced on behalf of the department by their witnesses categorically proved the fact that petitioner did not work continuously in the service of the respondents and number of breaks, as detailed out in reply to the statement of claim were proved by the witnesses of the department. Even if the entire period of service of the petitioner is taken into consideration, he actually worked for 185 days only therefore he has not completed 240 days in a calender year immediately preceding date of his alleged retrenchment. The compliance of Section 25F of the Industrial Disputes Act therefore was not required. She also argued that petitioner has neither in the statement of claim nor in his affidavit gave any specific name or instance as to who was junior to him was still retained in the service of the respondents nor has given any such names as to

which of the person was engaged subsequent to his removal. In the absence of these,the allegations of alleged non-compliance of Section 25G and H cannot be entertained.

I have considered the arguments advanced by learned counsel for the parties and perused the record.

In the present case, it has been proved by evidence of the management that the petitioner was engaged on daily wages basis in different spells of only 30 days and in between there were various breaks in his service. Even if total period of the petitioner working is counted, he is found to have worked only for 185 days. There was thus no violation of provisions of Section 25F of the Industrial Disputes Act. So far as argument of the learned counsel for the petitioner with regard to violation of Section 25G and 25H of the Industrial Disputes Act is concerned, the petitioner has not given any details or name of the persons who were junior to him were retained or appointed afresh thereafter. The engagement of the petitioner was made for fixed period of 30 days each time and he was discontinued after completion of 30 days. In these circumstances, it was not possible for the respondents to maintain

seniority list. Even for deciding question with regard to violation of Section 25G and 25H of the Industrial Disputes Act, initial burden at least to the extent of naming such persons who were junior to the petitioner and who were engaged after his removal, lies on the petitioner-workman and the management could be asked to discharge such burden only when the petitioner by naming such persons would have shifted such onus on them.

In view of the above, I do not find any illegality in the award passed by the learned labour court calling for interference by this Court.

The writ petition is accordingly dismissed.

(MOHAMMAD RAFIQ), J.

c.p.goyal/-